

FILED
U.S. DISTRICT COURT

2006 SEP 18 A 10:51

DISTRICT OF UTAH

DEPUTY CLERK

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

DUANE E. POTTS,

Plaintiff,

v.

DAVIS COUNTY, DAVIS COUNTY
SHERIFF'S OFFICE, CHRIS SORENSEN,
JASON SORENSEN, KELLY SPARKS,
KEVIN MCLEOD AND BUD COX,

Defendants.

ORDER

Civil No. 1:02CV00004B

Judge Dee Benson

Magistrate Judge Nuffer

Pursuant to the parties' stipulation, IT IS HEREBY ORDERED that the Plaintiff shall have through November 30, 2006 in which to respond to Defendants' Motion for Summary Judgment.

DATED this 15th day of September, 2006.

BY THE COURT:



Honorable Dee Benson
United States District Court Judge

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U.S. DISTRICT COURT

SEP 15 2006

U.S. DISTRICT COURT

local counsel.

2006 SEP 18 P 1:56

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

Phillip M. Adams & Associates, LLC, a Utah
limited liability company,

Plaintiff,

v.

Dell, Inc. et al.,

Defendants.

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*
*

Order
~~Motion~~ for Pro Hac Vice Admission and
Consent of Local Counsel

Case No. 1:05-CV-64-TS

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of DUCiv R 83-1.1(d), the motion for the admission *pro hac vice* of Anthony S. Gabrielson in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 18th day of September, 2006.


U.S. District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 18 A 10:51

CLERK OF COURT

STEVEN B. KILLPACK, Federal Defender (#1808)
CARLOS A. GARCIA, Assistant Federal Defender (#6877)
UTAH FEDERAL DEFENDER OFFICE
Attorney for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELDON PALMA-ALVAREZ,

Defendant.

**ORDER TO CONTINUE
CHANGE OF PLEA HEARING**

Case No. 1:06CR51 DB

Honorable Dee Benson

Based upon the motion by Defendant, Eldon Palma-Alvarez, stipulation of the government, and good cause appearing;

IT IS HEREBY ORDERED that the change of plea hearing scheduled for September 19, 2006, in the above-entitled matter is continued to the 26 day of Oct, 2006, at 1:30 p.m.

The Court finds that failure to continue hearing would deny counsel for Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Pursuant to 18 U.S.C. § 3161(h), the Court further finds that the ends of justice served by continuing the hearing in this matter outweigh the interest of the public and Defendant in a

speedy trial. Accordingly, the time between September 19, 2006 and the new hearing date listed above shall be excluded for purposes of speedy trial calculation.

DATED this 15 day of September, 2006.

BY THE COURT:



HONORABLE DEE BENSON
United States District Court Judge

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER SETTING CONDITIONS OF RELEASE

Victor Sanchez

Case Number: 1:06CR81PGC

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

US District Court

PLACE

350 South. SLC

on

as directed

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

SEP 19 2006

MARKUS B. ZIMMER, CLERK

BY DEPUTY CLERK

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

- () (7) The defendant shall:
- (✓)(a) maintain or actively seek employment.
 - () (b) maintain or commence an educational program.
 - (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:
Maintain current residence - may not move without PRIOR permission of PTS; travel restricted to state of Utah
 - () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (✓)(e) report on a regular basis to the supervising officer as directed.
 - () (f) comply with the following curfew:
 - (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon including ammunition
 - () (h) refrain from excessive use of alcohol.
 - (✓)(i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - (✓)(m) execute a cash bond in the amount of \$5000. With Clerk of Court
 - () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - () (o) surrender any passport to
 - () (p) obtain no passport
 - (✓)(q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - () (s) submit to an electronic monitoring program as directed by the supervising officer.
 - () (t)

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

X Vicki M Sanchez
Signature of Defendant

Address

City and State Telephone

Directions to the United States Marshal

- (X) The defendant is ORDERED released after processing.
() The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 9/18/06

Brooke C. Wells
Signature of Judicial Officer

Magistrate Judge Brooke C. Wells

Name and Title of Judicial Officer

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

JOSEPH J. CELLI,

Plaintiff,

v.

**MICHAEL W. WYNNE, Secretary of the
United States Department of the Air
Force,; UNITED STATES
DEPARTMENT OF THE AIR FORCE;
and HILL AIR FORCE BASE,**

Defendants.

**ORDER AFFIRMING
REPORT & RECOMMENDATION**

Case No. 1:06CV1DAK

This case was assigned to United States District Court Judge Dale A. Kimball, who then referred it to United States Magistrate Judge Paul Warner under 28 U.S.C. § 636(b)(1)(B). In front of Magistrate Judge Warner, Plaintiff filed a motion for summary judgment and a motion for default judgment. Defendants filed a motion to strike a memorandum filed by Plaintiff and a motion to dismiss. On August 11, 2006, Magistrate Judge Warner issued a Report and Recommendation, recommending that Plaintiff's motions for summary judgment and default judgment be denied and that Defendants' motion to strike and motion to dismiss be granted.

The Report and Recommendation notified Plaintiff that any objection to the Report and Recommendation was required to be filed within ten days of receiving it. On August 25, 2006, Plaintiff timely filed an Objection to Report and Recommendation. Plaintiff's objections state that the case has a jurisdictional basis under Title VII and that he is a "qualified handicap" under

the law. On September 15, 2006, Defendants filed a Response to Plaintiff's Objection to Magistrate Judge's Report and Recommendation.

The court has reviewed the file *de novo*. Although Magistrate Judge Warner found that Plaintiff's claims should be dismissed for lack of subject matter jurisdiction, which appears to exist under Title VII and the Rehabilitation Act, Magistrate Judge Warner also found that Plaintiff's claims should be dismissed for other alternative reasons. The court adopts these alternative grounds for dismissal.

The Report and Recommendation correctly concluded that to the extent that Plaintiff stated common law tort claims and 2003 employment discrimination claims, such claims should be dismissed for failure to exhaust administrative remedies. The Magistrate Judge also properly found that Plaintiff's claims for punitive and special damages should be dismissed because neither the Federal Tort Claims Act nor the Rehabilitation Act authorize awards of punitive damages or special damages.

Furthermore, the Magistrate Judge also properly concluded that Plaintiff's employment discrimination claims should be dismissed because Plaintiff failed to demonstrate that he is a "qualified handicap" under the Rehabilitation Act. The paperwork Plaintiff submitted does not demonstrate that Plaintiff was a "qualified handicap" as defined by the Rehabilitation Act. Finally, there is no basis for a retaliation claim based on Plaintiff's appraisals because no adverse action was related to the appraisal.

Accordingly, the court adopts and affirms the Magistrate's Report and Recommendation as discussed above. Therefore, it is the order of the court that Plaintiff's motions for summary judgment and default judgment are denied and Defendants' motion to strike and motion to dismiss are granted. The clerk of court is directed to enter judgment in favor of Defendants.

This case is closed, each party to bear its and his own fees and costs.

DATED this 19th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Northern Division for the District of Utah

Audre E. Thomas,

Plaintiff,

vs.

Kelatron Corporation,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 1:06CV60DAK

District Judge Dale A. Kimball

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 10/11/06, at 1:30 p.m. is **VACATED**.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>yes</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>9/22/06</u> |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| | c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties) | <u>8</u> |
| | d. Maximum Interrogatories by any Party to any Party | <u>30</u> |
| | e. Maximum requests for admissions by any Party to any Party | <u>30</u> |

- f. Maximum requests for production by any Party to any Party 30
DATE
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²
- a. Last Day to File Motion to Amend Pleadings 11/17/06
- b. Last Day to File Motion to Add Parties 12/16/06
4. RULE 26(a)(2) REPORTS FROM EXPERTS³
- a. Plaintiff 4/13/07
- b. Defendant 5/18/07
- c. Counter Reports 6/15/07
5. OTHER DEADLINES
- a. Discovery to be completed by:
- Fact discovery 6/15/07
- Expert discovery 7/13/07
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions 8/17/07
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION
- a. Referral to Court-Annexed Mediation N
- b. Referral to Court-Annexed Arbitration N
- c. Evaluate case for Settlement/ADR on 8/17/07
- d. Settlement probability:
7. TRIAL AND PREPARATION FOR TRIAL:
- a. Rule 26(a)(3) Pretrial Disclosures⁴
- Plaintiffs 11/7/07
- Defendants 11/21/07
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

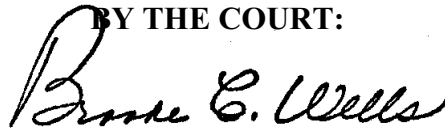
| | | | <u>DATE</u> |
|----|---|---------------|---------------------------------|
| c. | Special Attorney Conference ⁵ on or before | | 12/5/07 |
| d. | Settlement Conference ⁶ on or before | | |
| e. | Final Pretrial Conference | 2:30 p.m. | 12/19/07 |
| f. | Trial | <u>Length</u> | <u>Time</u> <u>Date</u> |
| | i. Bench Trial | | |
| | ii. Jury Trial | <u>3</u> | <u>8:30 a.m.</u> <u>1/14/08</u> |

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 19 day of September, 2006.

BY THE COURT:



**Brooke C. Wells
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Thomas v Kelatron 1 06 cv 60 DAK alp.wpd

CALLISTER NEBEKER & McCULLOUGH
MARK L. CALLISTER (6709)
MICHAEL D. STANGER (10406)
Zions Bank Building, Suite 900
10 East South Temple
Salt Lake City, UT 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

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OFFICE OF
JUDGE TENA CAMPBELL
2006 SEP 19 P 4: 32

DISTRICT OF UTAH

BY: DEPUTY CLERK

Attorneys for Plaintiff, Counterclaim and Third Party
Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TRACE MINERALS RESEARCH, L.C., a
Utah Limited Liability Company,

Plaintiff,

vs.

MINERALS RESOURCES
INTERNATIONAL, INC., a Utah corporation;
BRUCE ANDERSON, an individual; and
JOHN DOES I through X,

Defendants.

MINERAL RESOURCES INTERNATIONAL,
INC.,

Counterclaim Plaintiff,

vs.

TRACE MINERALS RESEARCH, L.C.;
ELEMENTS OF NATURE, INC.; MATT
KILTS; CRAIG MILES, SCOTT PERKES;
JAMES CRAWFORD; and JOHN DOES I
through X,

Counterclaim and Third Party
Defendants.

**ORDER GRANTING LEAVE TO
FILE SECOND AMENDED
COMPLAINT**

Civil No. 1:06CV00068

Judge Tena Campbell

Based upon the Stipulation of the parties,

IT IS HEREBY ORDERED that pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff is granted leave of Court to file the Second Amended Complaint. Defendants shall have twenty days from the filing date of the Second Amended Complaint to file a response.

DATED this 19 day of September, 2006.

BY THE COURT:



TENA CAMPBELL
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:

BEARNSON & PECK, L.C.

/s/ Daniel K. Dygert
SHAUN L. PECK
DANIEL K. DYGERT
*(Signed by Filing Attorney with permission
of Daniel K. Dygert per email dated 09/18/06)*

NAN T. BASSETT – #8909
GARY T. WIGHT - #10994
KIPP AND CHRISTIAN, P.C.
Attorneys for Plaintiff
Fourth Floor
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801)521-3773

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|----------------------------|---|-------------------------------|
| MELISSA G. ROLLINS, | : | SCHEDULING ORDER AND |
| | : | ORDER VACATING HEARING |
| Plaintiff, | : | |
| vs. | : | |
| | : | Case No. 1:06-cv-00073 PGC |
| CONVERGYS CMG UTAH, INC.,: | : | |
| Defendant. | : | |

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for October 11, 2006 at 2:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

| | | |
|-----------|---|-----------------|
| 1. | PRELIMINARY MATTERS | DATE |
| | Nature of claims and any affirmative defenses is framed by the pleadings. | |
| a. | Was Rule 26(f)(1) Conference held? | <u>07/26/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>00/00/00</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>09/22/06</u> |
| 2. | DISCOVERY LIMITATIONS | NUMBER |
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition (unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>25</u> |
| f. | Maximum requests for production by any Party to any Party | <u>25</u> |
| 3. | AMENDMENT OF PLEADINGS/ADDING PARTIESⁱ | DATE |
| a. | Last Day to File Motion to Amend Pleadings | |
| | Plaintiff | <u>11/30/06</u> |
| | Defendant | <u>11/30/06</u> |
| b. | Last Day to File Motion to Add Parties | |

| | |
|-----------|-----------------|
| Plaintiff | <u>11/30/06</u> |
| Defendant | <u>11/30/06</u> |

| | | |
|-----------|--|-----------------|
| 4. | RULE 26(a)(2) REPORTS FROM EXPERTSⁱⁱ | DATE |
| a. | Plaintiff | <u>04/30/07</u> |
| b. | Defendant | <u>06/15/07</u> |
| c. | Counter reports | <u>07/01/07</u> |

| | | |
|-----------|--|-----------------|
| 5. | OTHER DEADLINES | DATE |
| a. | Discovery to be completed by: | |
| | Fact discovery | <u>03/31/07</u> |
| | Expert discovery | <u>07/31/07</u> |
| b. | (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e) | <u>NA</u> |
| c. | Deadline for filing dispositive or potentially dispositive motions | <u>08/31/07</u> |

| | | |
|-----------|--|-----------------|
| 6. | SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION | DATE |
| a. | Referral to Court-Annexed Mediation: | <u>No</u> |
| b. | Referral to Court-Annexed Arbitration | <u>No</u> |
| c. | Evaluate case for Settlement/ADR on | <u>03/31/07</u> |

- d. Settlement probability: Fair
- Can be better evaluated upon completion of fact discovery

***Specify # of days for Bench or Jury trial as appropriate.
Shaded areas will be completed by the court.***

| 7. | TRIAL AND PREPARATION FOR TRIAL | TIME | DATE |
|-----|---|---------------|-----------------|
| a. | Rule 26(a)(3) Pretrial Disclosures ⁱⁱⁱ | | |
| | Plaintiff | | <u>12/12/07</u> |
| | Defendant | | <u>12/26/07</u> |
| b. | Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule) | | <u>00/00/00</u> |
| c. | Special Attorney Conference ^{iv} on or before | | <u>01/09/08</u> |
| d. | Settlement Conference ^v on or before | | <u>00/00/00</u> |
| e. | Final Pretrial Conference | 3_:00 p.m. | <u>01/23/08</u> |
| f. | Trial | <u>Length</u> | 5 days |
| | | <u># days</u> | |
| i. | Bench Trial | __:___.m. | <u>00/00/00</u> |
| ii. | Jury Trial | _8:00 a.m. | <u>02/04/08</u> |

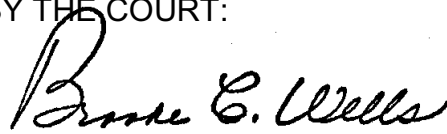
8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony

under Daubert must be raised by written motion before the final pre-trial conference.

Dated this ____ 19__ date of September_____, 2006.

BY THE COURT:



U.S. Magistrate Judge

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

ⁱ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

ⁱⁱ **Error! Main Document Only.** A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

ⁱⁱⁱ Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

^{iv} The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

^v The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2006 SEP 19 A 11: 28

MARVIN ELLIS,)
)
Petitioner,) Case No.
)
v.)
)
JUDGE BACHMAN,) **O R D E R**
)
Respondent.)

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

Petitioner/inmate, Marvin Ellis, submits a *pro se* civil case.¹ Plaintiff applies to proceed without prepaying his filing fee.² However, Plaintiff has not as required by statute submitted "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined."³

IT IS HEREBY ORDERED that Plaintiff's application to proceed without prepaying his filing fee is granted.

So that the Court may calculate Plaintiff's initial partial filing fee, IT IS ALSO ORDERED that Plaintiff shall have thirty days from the date of this Order to file with the Court a certified copy of his inmate trust fund account statement(s). If

Judge Dale A. Kimball
DECK TYPE: Civil
DATE STAMP: 09/19/2006 @ 12:03:50
CASE NUMBER: 1:06CV00110 DAK

¹See 42 U.S.C.S. § 1983 (2006).

²See 28 *id.* § 1915.

³See *id.* § 1915(a)(2) (emphasis added).

Plaintiff was held at more than one institution during the past six months, he shall file certified trust fund account statements (or institutional equivalent) from the appropriate official at each institution where he was confined. The trust fund account statement(s) must show deposits and average balances for each month. If Plaintiff does not fully comply, his case will be dismissed.

DATED this 18th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Nuffer', written over a horizontal line.

DAVID NUFFER
United States Magistrate Judge

United States District Court
for the District of Utah

RECEIVED

SEP 14 2006

OFFICE OF
JUDGE TENA CAMPBELL

Request and Order to Amend Previous Petition

Name of Offender: **Carlos Comacho Jaramillo** Docket Number: **2:00-CR-00251-001-TC**
(A.K.A.: Carlos Comacho, Carlos Jaramillo, Alex Alvilla, Carlos Jaramillo)Name of Sentencing Judicial Officer: **Honorable Tena Campbell, United States District Judge**Date of Original Sentence: **December 7, 2000**Original Offense: **Bank Fraud**Original Sentence: **Commitment to Bureau of Prisons 16 months, 36 months supervised release**Date of Resentencing on Violation: **July 15, 2002**Violation Sentence: **Commitment to Bureau of Prisons 6 months, 18 months supervised release**Type of Supervision: **Supervised Release** Supervision Began: **September 10, 2003****PETITIONING THE COURT**☒ To amend the petition signed on January 23, 2004 as follows:**CAUSE***Allegations on January 23, 2004 petition:***Allegation No. 1:** On January 16, 2004, the defendant violated the conditions of his electronic monitoring.*Additional allegations:***Allegation No. 2:** The defendant failed to report to the United State Probation Office on January 27, 2004, as directed, the defendant absconded supervision and his whereabouts remained unknown to the United States Probation Office, District of Utah, until August 11, 2006.**Allegation No. 3:** The defendant failed to return his electronic monitoring equipment on January 27, 2004, as directed, the equipment has never been recovered, and was valued at \$800.**Allegation No. 4:** The defendant has failed to pay his financial obligations as directed by the Court, and currently has an overdue balance of \$7,867.84.**Allegation No. 5:** The defendant left the judicial district without the permission of the Court, and was subsequently apprehended outside of the United States, in Mexico.FILED
U.S. DISTRICT COURT
2006 SEP 19 P 4 32
DISTRICT OF UTAH
DEPUTY CLERK

I declare under penalty of perjury that the foregoing is true and correct

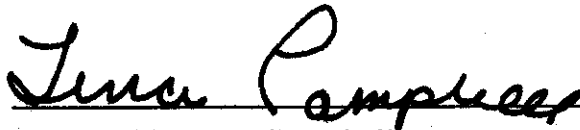


Maria EA Sanchez, U.S. Probation Officer

Date: September 13, 2006

THE COURT ORDERS:

- ☒ That the original petition be amended
to include all allegations outlined
- ☐ No action
- ☐ Other



Honorable Tena Campbell
United States District Judge

Date:

Sept 19, 2006

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT

Central Division

District of

Utah

UNITED STATES OF AMERICA

V.

Leslie D. Mower

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX202CR000787-002

USM Number: 10178-081

Anneli R. Smith, Esq.

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1 - 7 of superseding indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|------------------|-------------------|---------------|----------|
| 18 USA Sec. 371 | Conspiracy | | I |
| 18 USC Sec. 7201 | Tax Evasion | | II - VII |

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/13/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U. S. District Judge

Title of Judge

Date

September 18, 2006

DEFENDANT: Leslie D. Mower
CASE NUMBER: DUTX202CR000787-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

27 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in the facility in Dublin, California.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 11/13/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Leslie D. Mower
CASE NUMBER: DUTX202CR000787-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Leslie D. Mower
CASE NUMBER: DUTX202CR000787-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation office access to all requested financial information.
2. The defendant shall file all delinquent tax returns with the IRS case investigator within 180 days from the date of sentencing, and shall be required to meet and fully cooperate with the IRS by making all documents available to the IRS in the determination and satisfaction of her civil tax liabilities for the years 1989 through 2002.

DEFENDANT: Leslie D. Mower
CASE NUMBER: DUTX202CR000787-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|--------------|--------------------|
| TOTALS | \$ 700.00 | \$ 60,000.00 | \$ |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
|----------------------|--------------------|----------------------------|-------------------------------|

| | | |
|--------|----------------|----------------|
| TOTALS | \$ <u>0.00</u> | \$ <u>0.00</u> |
|--------|----------------|----------------|

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Leslie D. Mower

CASE NUMBER: DUTX202CR000787-002

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The court orders defendant Leslie D. Mower to pay the cost of prosecution in the amount of \$14,255.11, jointly and severally with co-defendant Thomas E. Mower.

DEFENDANT: Leslie D. Mower
CASE NUMBER: DUTX202CR000787-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 60,700.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Special Assessment Fee of \$700 is due immediately. The court orders a fine of \$60,000 is imposed which is due immediately and shall be paid in it's entirety upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☒ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 8 - 11

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central Division

District of

Utah

2006 SEP 18 P 4:30
UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Thomas E. Mower

Case Number: DUTX202CR000787-001

USM Number: 10179-081

Max D. Wheeler, Esq.

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1 - 7 of superseding indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|------------------|-------------------|---------------|----------|
| 18 USC Sec. 371 | Conspiracy | | I |
| 26 USC Sec. 7201 | Tax Evasion | | II - VII |

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/13/2006

Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

September 18, 2006
Date

DEFENDANT: Thomas E. Mower
CASE NUMBER: DUTX202CR000787-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

33 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in FPC Englewood, Colorado.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 11/13/2006.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Thomas E. Mower
CASE NUMBER: DUTX202CR000787-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Thomas E. Mower
CASE NUMBER: DUTX202CR000787-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation office access to all requested financial information.
2. The defendant shall file all delinquent tax returns with the IRS case investigator within 180 days from the date of sentencing, and shall be required to meet and fully cooperate with the IRS by making all documents available to the IRS in the determination and satisfaction of her civil liabilities for the years 1989 through 2002.

DEFENDANT: Thomas E. Mower

CASE NUMBER: DUTX202CR000787-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|--------------|--------------------|
| TOTALS | \$ 700.00 | \$ 75,000.00 | \$ |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
|----------------------|--------------------|----------------------------|-------------------------------|

| | | |
|--------|----------------|----------------|
| TOTALS | \$ <u>0.00</u> | \$ <u>0.00</u> |
|--------|----------------|----------------|

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Thomas E. Mower

CASE NUMBER: DUTX202CR000787-001

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The court orders defendant Thomas E. Mowers to pay the cost of prosecution in the amount of \$14,255.11 jointly and severally with co-defendant Leslie D. Mowers.

DEFENDANT: Thomas E. Mower
CASE NUMBER: DUTX202CR000787-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 75,700.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$700 is due immediately. A fine of \$75,000 is due immediately and shall be paid in it's entirety upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☒ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 8 - 11

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

PATTY LONG,

Plaintiff,

vs.

**AMERICAN HOME PRODUCTS
CORP., WYETH-AYERST
LABORATORIES, A.H. ROBINS
CO., WILLIAM BLACK, M.D., and
IHC HEALTH SERVICES,**

Defendants.

ORDER TO SHOW CAUSE

Case No. 2:02-CV-972 TS

Plaintiff is hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiff is directed to respond in writing within ten days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 18th day of September, 2006.

By



Ted Stewart
United States Judge

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

* * * * * 2006 SEP 18 P 2:12

UNITED STATES OF AMERICA,

)

Case No.2:03CV0140 DS

Plaintiff,

)

DEPUTY CLERK

vs.

)

MEMORANDUM DECISION
AND ORDER

\$72,100 IN UNITED STATES
CURRENCY,

)

Defendant.

)

* * * * *

The Court having considered Ahmad Shayesteh's Motion for Relief from the Court's Order of April 12, 2006, finds no basis in law or fact to grant the requested relief and denies the Motion for substantially the same reasons as set forth by the Government in its opposition pleading.

IT IS SO ORDERED.

DATED this 18th day of September, 2006.

BY THE COURT:



DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

PREPARED AND SUBMITTED BY:

James E. Magleby (7247)
Christine T. Greenwood (8187)
Christopher M. Von Maack (10468)
MAGLEBY & GREENWOOD, P.C.
170 South Main Street, Suite 350
Salt Lake City, Utah 84101-3605
Telephone: 801.359.9000
Facsimile: 801.359.9011

George M. Haley (1302)
David R. Parkinson (8258)
HOLME ROBERTS & OWEN, L.L.P.
299 South Main Street, Suite 1800
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Telephone: 801.521.5800
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Richard D. Burbidge (0492)
Jefferson W. Gross (8339)
Robert J. Shelby (8319)
BURBIDGE & MITCHELL
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Telephone: 801.355.6677
Facsimile: 801.355.2341

Attorneys for Plaintiff and Counterclaim
Defendant Klein-Becker usa, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

KLEIN-BECKER usa, LLC, a Utah limited
liability company,

Plaintiff,

vs.

ALLERGAN, INC., a Delaware
corporation,

Defendant.

ORDER RECOGNIZING
SUBSTITUTION OF COUNSEL

Case No.: 2:03CV00514DB

Honorable Dee Benson

Magistrate Paul M. Warner

Having considered the Motion to Acknowledge Substitution of Counsel, and for good
cause shown, it is hereby

ORDERED that the motion is granted and Blake D. Miller shall be removed from the service notice in this case.

IT IS SO ORDERED this 19th day of September 2006.

UNITED STATES DISTRICT COURT

A handwritten signature in black ink, appearing to read "Paul M. Warner". The signature is fluid and cursive, with the first name "Paul" and last name "Warner" being clearly legible, and "M." as a middle initial.

Magistrate Paul M. Warner

FILED
U.S. DISTRICT COURT
2006 SEP 18 A 10:51

CLERK OF DISTRICT COURT

DEPUTY CLERK

MARY C. CORPORON #734
Attorney for Defendant
CORPORON, WILLIAMS & BRADFORD, P.C.
405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|----------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | ORDER CONTINUING TRIAL |
| Plaintiff, | : | |
| | : | |
| -vs- | : | |
| | : | |
| JAMES FRED GORDON, JOHN | : | |
| VINCENT ALLEN, and DANELLE | : | Case No. 2:04 CR 00688 DB |
| DECEW, | : | |
| | : | Judge Dee Benson |
| Defendants. | : | Magistrate Judge David O. Nuffer |

Based upon Defendant's Motion to Continue Trial and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the trial previously rescheduled from October 10, 2006 to ~~November 13, 2006~~ is continued to Nov 13, 2006. The time from the previous date to the new date shall be excluded from the time allowed for trial under the Speedy Trial Act, 18 U.S.C., § 3161, due to the need to maintain continuity of counsel.

DATED this 15 day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive style with a large, stylized "D" and "B".

HONORABLE DEE BENSON
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 SEP 18 A 10:47

CLERK OF COURT

U.S. DISTRICT COURT

Erik A. Christiansen (7372)
Kristine Edde Johnson (7190)
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Attorneys for Defendants and Counterclaim
Defendants SCITEC, U.S.A., SCICOR, INC. and
PETER DAUBNER
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ELF ATHLETICS, LLC, a Utah limited liability
company,

Plaintiff,

vs.

JSR RESEARCH, INC., a Florida corporation,
GARDEN OF LIFE, INC., a Florida corporation dba
Garden of Life, JORDAN RUBIN, an individual,

Defendants.

~~PROPOSED~~ ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO DISMISS

Judge: Hon. Dee Benson

DECK TYPE: Civil

DATE STAMP:

CASE NUMBER

2:04CV00748 DB

On June 7, 2006 at 2:00 p.m., the following motions came on regularly for hearing before the Honorable

Judge Dee Benson, presiding:

1. Defendants And Counterclaim Defendants Scitec, U.S.A., Scicor, Inc. and Peter Daubner's Motion to Dismiss Claims II, III, IV, V, VI and VIII of Garden of Life's First Amended Complaint and Amended Counterclaims of JSR Research, Inc. and Jordan S. Rubin;

2. Motion of Counterclaim Defendants Elf Athletics, LLC, David Dodart, and Life Science Products, Inc. for Dismissal of the Amended Counterclaims of Defendant/Counterclaimant Jordan S. Rubin;

3. Motion of Counterclaim Defendants Elf Athletics, LLC and David Dodart for Partial Dismissal of Amended Counterclaims of Defendant/Counterclaimant JSR Research, Inc.

4. Motion of Defendants Elf Athletics, LLC And David Dodart For Dismissal Of The Claims of Garden of Life, Inc.'s First Amended Complaint;

5. Motion of Defendant and Counterclaim Defendant Life Science Products, Inc. To Dismiss The Claims of Plaintiff Garden of Life, Inc.'s First Amended Complaint And Counterclaimant JSR Research, Inc.'s Amended Counterclaims; and

6. Defendants And Counterclaim Defendants Scitec, U.S.A., Scicor, Inc. and Peter Daubner's Joinder To Motion of Counterclaim Defendants Elf Athletics, LLC, David Dodart, and Life Science Products, Inc. For Dismissal Of The Amended Counterclaims of Defendant/Counterclaimant Jordan S. Rubin.

M. Eric Olmstead appeared on behalf of plaintiff and counterclaim defendant Elf Athletics, LLC, and on behalf of third-party defendants David Dodart and Life Science Products, Inc. Erik A. Christiansen appeared on behalf of defendants and counterclaim defendants SciTec, U.S.A., SciCor, Inc., and Peter Daubner. Michael M. Later appeared for plaintiff Garden of Life, Inc., and counterclaimants JSR Research, Inc. and Jordan Rubin.

Having reviewed the pleadings and authorities submitted by counsel, and having heard and considered oral argument, the Court hereby ORDERS as follows:

1. Life Science Products, Inc.'s motion to dismiss the fraud claims of Garden of Life, Inc. and the counterclaims of JSR Research, Inc. for fraud is denied. The motion of Elf Athletics, LLC and David Dodart to dismiss the fraud claims of Garden of Life, Inc. is denied. The motion of Elf Athletics, LLC and David Dodart to

dismiss the fraud counterclaims of JSR Research, Inc. is denied. The motion of SciTec, U.S.A., SciCor, Inc., and Peter Daubner to dismiss the fraud claims alleged by Garden of Life, Inc. and the fraud counterclaims alleged by JSR Research, Inc. and Jordan S. Rubin is denied. The fraud claims, conspiracy to commit fraud, and aiding and abetting fraud claims and counterclaims state viable claims for relief. There are enough allegations to support the fraud claims, limited as they are to claims for fraud in the inducement. They are not barred by the economic loss doctrine. There are sufficient allegations of intentional fraudulent behavior of intentionally misstating certain facts and omitting to provide others that state claims and counterclaims for fraud in the inducement.

2. Life Science Products, Inc.'s motion to dismiss the negligent misrepresentation claim of Garden of Life, Inc. and the negligent misrepresentation counterclaim of JSR Research, Inc. is granted. The motion of Elf Athletics, LLC and David Dodart to dismiss the negligent misrepresentation claims of Garden of Life, Inc. is granted. The motion of Elf Athletics, LLC and David Dodart to dismiss the negligent misrepresentation counterclaims of JSR Research, Inc. is granted. The motion of SciTec, U.S.A., SciCor, Inc. and Peter Daubner to dismiss the negligent misrepresentation claims of Garden of Life, Inc. and the negligent misrepresentation counterclaims of JSR Research, Inc. and Jordan S. Rubin is granted. The above-referenced motions to dismiss the negligent misrepresentation claims and negligent misrepresentation are granted because the claims alleged are not claims upon which relief can be granted, and they are barred by the economic loss doctrine. The facts alleged do not create a question of fact as to whether there was duress. The Court finds no independent duty on the part of the parties charged with negligent misrepresentation which would support a claim and somehow avoid the cases that discuss the requirements for negligent misrepresentation in Utah, including the very important requirement that there must be alleged harm to person or property, or some independent duty, which the Court does not find under the circumstances alleged.

3. The motion of Elf Athletics, LLC and David Dodart to dismiss the implied breach of warranty claims of Garden of Life, Inc. is granted. The motion of Elf Athletics, LLC and David Dodart to dismiss the implied breach of warranty counterclaims of JSR Research, Inc. is granted. The motion of SciTec, U.S.A., SciCor, Inc. and

Peter Daubner to dismiss the implied breach of warranty claims of Garden of Life, Inc. and the implied breach of warranty claims of JSR Research, Inc. and Jordan S. Rubin are granted. The implied breach of warranty claims are dismissed because there is no privity of contract, for the most part, and where there is privity of contract, the implied warranty claims are disclaimed in the contracts themselves. The parties had the right to enter into the contracts and they did so, and therefore, in the Court's view, the breach of implied warranty claims do not survive the motions to dismiss.

4. The motion of Elf Athletics, LLC and David Dodart to dismiss the claims of illegality, impossibility and frustration of purpose alleged by Garden of Life, Inc. are granted. The motion of SciTec, U.S.A., SciCor, Inc. and Peter Daubner to dismiss the claims of Garden of Life, Inc. for illegality, impossibility and frustration of purpose and the counterclaims of JSR Research, Inc. and Jordan S. Rubin for illegality, impossibility and frustration of purpose are granted. The above-referenced motions to dismiss the claims of illegality, impossibility and frustration of purpose are granted, but with leave for Garden of Life, Inc., JSR Research, Inc. and/or Jordan S. Rubin to plead illegality, impossibility and/or frustration of purpose as affirmative defenses to any claims made by Elf Athletics, LLC, David Dodart, Life Science Products, Inc., Scitec, U.S.A., Scicor, Inc. and Peter Daubner, notwithstanding any objections as to the timeliness of the affirmative defenses that might otherwise have been available.

5. The motion of David Dodart to dismiss the claims of Garden of Life, Inc. for breach of the implied covenant of good faith and fair dealing is granted. The motion of David Dodart to dismiss the counterclaims of JSR Research, Inc. for breach of the implied covenant of good faith and fair dealing is granted. The motion of Elf Athletics, LLC to dismiss the claims of Garden of Life, Inc. for breach of the implied covenant of good faith and fair dealing is granted. The motion of Elf Athletics, LLC to dismiss the counterclaims of JSR Research, Inc. for breach of the implied covenant of good faith and fair dealing is denied. The above-referenced motions to dismiss the claims for breach of the covenant of good faith and fair dealing and the counterclaims for breach of the covenant of good faith and fair dealing are granted, except as to Elf Athletics, LLC. There are sufficient facts alleged against Elf

Athletics, LLC.

6. The motion of Elf Athletics, LLC, David Dodart, Life Science Products, Inc., and the joinder of SciTec, U.S.A., SciCor, Inc. and Peter Daubner in the motion to dismiss the counterclaims of Jordan S. Rubin is granted, except as to the fraud counterclaims alleged by Jordan S. Rubin. With respect to the fraud claims, the Court finds that Mr. Rubin has standing based on his status as a personal guarantor. Mr. Rubin has been sued because he was a guarantor. He is a defendant in the lawsuit because he was a guarantor. If for some reason, JSR Research, Inc., the contracting party, fails to pay, his guarantee puts him at risk of being sued on the basis of that guarantee. Mr. Rubin can allege the same fraud claims as an individual that he claims were directed personally to him to induce him to sign the guarantee that put him at risk for all of these years. However, because there have not been identified any specific damages as to Mr. Rubin that are distinct and separate from the corporation, the Court will look at this issue again after all of the evidence is in (in the event it is raised by motion by a party), so the motions to dismiss are denied without prejudice. There also will be no duplication of damages. Mr. Rubin will not be entitled, if there is a fraud claim, to damages that also are awarded to the corporation.

7. The motion of Life Science Products, Inc. to dismiss the claim of Garden of Life, Inc. and the counterclaim of JSR Research, Inc. for unfair competition under Utah Code Ann. § 13-5A-101 et seq. are granted as stipulated to by counsel for Garden of Life, Inc. and JSR Research, Inc. The motion of Elf Athletics, LLC and David Dodart to dismiss the claim of Garden of Life, Inc. for unfair competition under Utah Code Ann. § 13-5A-101, et seq. is granted as stipulated to by counsel for Garden of Life, Inc. The motion of Elf Athletics, LLC and David Dodart to dismiss the counterclaim of JSR Research, Inc. for unfair competition under Utah Code ann. § 13-5A-101, et seq. is granted as stipulated to by counsel for JSR Research, Inc.

8. Garden of Life, Inc., JSR Research, Inc. and/or Jordan Rubin shall have thirty (30) days to file any amended pleadings which include additional affirmative defenses alleging illegality, impossibility and frustration of purpose. Elf Athletics, LLC, David Dodart, Life Science Products, Inc., SciTec, U.S.A., SciCor, Inc., and Peter Daubner shall thereafter have thirty (30) days to respond to any amended pleadings filed by Garden of Life, Inc.,

JSR Research, Inc., and/or Jordan Rubin, and/or to file answers or other appropriate responses to the claims and counterclaims that remain at issue after entry of this Order.
DATED this 18th day of September, 2006.



HON. DEE BENSON
UNITED STATES DISTRICT COURT JUDGE

Approved As To Form

/s/ Michael Later

*(Signed copy of document bearing signature of
Other Attorney is being maintained in the office
of the Filing Attorney)*

Michael Later

Counsel to Garden of Life, Inc., JSR Research, Inc.
And Jordan Rubin

Approved As To Form

/s/ Eric Olmstead

*(Signed copy of document bearing signature
of Other Attorney is being maintained in the
office of the Filing Attorney)*

Eric Olmstead

Counsel to Elf Athletics, LLC, David
Dodart, and Life Science Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2006, I caused to be mailed, first class, postage prepaid, via U.S.

Mail, a true and correct copy of the foregoing **[PROPOSED] ORDER GRANTING IN PART AND DENYING**

IN PART MOTIONS TO DISMISS to:

George W. Pratt
Jones Waldo Holbrook & McDonough
170 S. Main Street, Suite 1500
P.O. Box 45444
Salt Lake City, Utah 84145-0444

Sean M. Ellsworth
Ellsworth Roppolo
404 Washington Avenue, Suite 750
Miami Beach, FL 33139

Michael M. Later
The Law Offices of Michael M. Later
3060 West Post Road
Las Vegas, NV 89118

Marc Alexander
Jeff J. Astarabadi
William M. Hensley
Jackson Demarco Tidus Peckenpaugh
2030 Main Street, Suite 1200
Irvine, CA 92614

M. Eric Olmstead
Barney McKenna & Olmstead, P.C.
63 South 300 East, Suite 202
P.O. Box 2710
St. George, Utah 84771-2710

Mark B. Seiger
Charles F. Gfeller
Edwards & Angell
990 State House Square, 9th Floor
Hartford, CT 06103
Denise S. Kraft
Edwards & Angell
919 Market Street, Suite 1500
Wilmington, DE 19801

/s/ Carola M. Groos

United States District Court
for the District of Utah

**Request and Order for Modifying Conditions of Supervision
With Consent of the Offender**

(Waiver of hearing attached)

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 1:45

DISTRICT OF UTAH

Name of Offender: **Lisa Garrett Mickelsen**

Docket Number: **2:05-CR-00070-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell
United States District Judge**

Date of Original Sentence: **June 15, 2005**

Original Offense: **Possession of Stolen Mail**

Original Sentence: **10 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **November 16, 2005**

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

The defendant shall reside in a community treatment center for a period of up to 180 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.

CAUSE

On September 18, 2006, the defendant reported to the United States Probation Office that she has been using marijuana and methamphetamine for approximately the past two weeks. The defendant appears to be in need of residential or intensive outpatient treatment. She is in the process of attempting to obtain a treatment provider. Until such time as a provider is obtained, residence in the Community Correctional Center appears appropriate.

I declare under penalty of perjury that the foregoing is true and correct



Mindy Eckman, U.S. Probation Officer
Date: September 18, 2006

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other

Tena Campbell
Honorable Tena Campbell
United States District Judge

Date: 9-20-2006

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer Mindy Eckman that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:05-CR-00070-001-TC. The modification would be:

The defendant shall reside in a community treatment center for a period of up to 180 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.


Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.



Lisa Garrett Mickelsen

September 18, 2006

Date



Witness: Mindy Eckman
United States Probation Officer

DAVID V. FINLAYSON (6540)
Attorney for Defendant
43 East 400 South
Salt Lake City, UT 84111
Telephone: (801) 220-0700
Facsimile: (801) 364-3232

FILED
U.S. DISTRICT COURT
2006 SEP 19 A 9:55
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, | : | ORDER CONTINUING |
| | : | SENTENCING HEARING |
| Plaintiff, | : | |
| -v- | : | |
| CASSANDRA BALDONADO, | : | Case No. 2:05 cr 689 |
| Defendant. | : | Honorable Ted Stewart |

Upon motion of Defendant CASSANDRA BALDONADO, and good cause appearing, the Defendant's Motion to Continue the Sentencing Hearing in the above-entitled case is hereby granted. The Sentencing hearing is re-set for 10/18/06 @ 8:00 a.m.

DATED this 18th day of September, 2006.


HONORABLE TED STEWART
U.S. District Court Judge

United States District Court

District of Utah

FILED
DISTRICT COURT
2006 SEP 18 A 10:51

UNITED STATES OF AMERICA

vs.

Ryan Ferguson

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: DUTX 2:05CR000813-001

Plaintiff Attorney: David F. Backman

Defendant Attorney: Kristen Angelos

Atty: CJA ___ Ret ___ FPD ☒

Defendant's Soc. Sec. No.: 4438

Defendant's Date of Birth: 1975

Defendant's USM No.: 13105-081

Defendant's Residence Address:

N/A

Country

09/14/2006

Date of Imposition of Sentence

Defendant's Mailing Address:

N/A

Country

THE DEFENDANT:

☒ pleaded guilty to count(s)☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)

COP 1/19/06 Verdict

I - Indictment**Title & Section**

18USC§922(g)(1)

Nature of Offense

Possession of Firearms by a Convicted Felon

Count**Number(s)**

I

- ☐ The defendant has been found not guilty on count(s) _____
- ☒ Count(s) **II-Indictment** _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **51 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months.**

- ☐ The defendant is placed on Probation for a period of _____.
- The defendant shall not illegally possess a controlled substance.

Defendant: Ryan Ferguson
Case Number: 2:05CR000813-001

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent business where alcohol is the chief item of order.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

3. The defendant will submit to drug/alcohol testing as directed by the probation office.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

Defendant: Ryan Ferguson
Case Number: 2:05CR000813-001

The defendant shall make restitution to the following payees in the amounts listed below:

| <u>Name and Address of Payee</u> | <u>Amount of Loss</u> | <u>Amount of Restitution Ordered</u> |
|----------------------------------|-----------------------|--------------------------------------|
| SEE ATTACHED SHEET | \$66,762.66 | \$66,762.66 |

Totals: \$ \$66,762.66 \$ \$66,762.66

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☒ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other:

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00 , payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Federal Correctional Institution at Inglewood, CO., for family visitations. The Court also recommends that the defendant participates and completes the 500 hour drug re-hab program.

Defendant: Ryan Ferguson
Case Number: 2:05CR000813-001

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

9-15-2006



Dee Benson

United States District Judge

Defendant: Ryan Ferguson
Case Number: 2:05CR000813-001

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

THE COURT ALSO FINDS that restitution of \$66,762.66 is payable as follows:

| Victim | Address | Amount Owed |
|--|--|--------------------|
| Holmes Heating ATTN: Michael Holmes | 701 East State Street Lehi, UT 84043 | \$5,000.00 |
| Allied Insurance ATTN: Jeanette Masciana | 110 Locust Street, Dept. 2019 Des Moines, IA 50391-2019 | \$23,580.85 |
| Nationwide Insurance ATTN: Cody Schultes | 110 Locust Dept. 5595 Des Moines, IA 50391-5595 | \$5,556.11 |
| Nubel-Bowen & Leavitt | 280 South Main, Suite 200 Pleasant Grove, UT 84062 | \$21,170.70 |
| Northpoint Insurance Corp. | 5818 South 900 East, Suite 100 Salt Lake City, UT 84121 | \$243.00 |
| Ram's Pawn Shop | 7980 South State, Suite B Midvale, UT | \$110.00 |
| Carla & Arthur Harding | 628 East State Street Lehi, UT 84043 | \$4,202.00 |
| Jasper Plumbing ATTN: Terry Jasper | 685 East State Street Lehi, UT 84043 | \$1,600.00 |
| High Country Concrete ATTN: Jennifer Thompson | 689 East State Street Lehi, UT 84043 | \$2,775.00 |
| Family Dollar ATTN: Lucile Crossgrove | 630 East State Street Lehi, UT 84043 | \$1,000.00 |
| Cobalt Refrigeration ATTN: Scott Wolfenden | 687 East State Street Lehi, UT 84043 | \$1,000.00 |
| Terry Dority | 7928 South 860 East Sandy, UT 84094 | \$ 25.00 |
| Tim Monson | 350 East 900 North Lehi, UT 84043 | \$ 500.00 |
| TOTAL | | \$66,762.66 |

2006/SEP/14/THU 02:37 PM USPO SLC UTAH

FAX No. 9-801-526-1136

P 004/004

United States District Court
for the District of Utah

Amended Petition and Order for Action on Conditions of Pretrial Release

FILED
U.S. DISTRICT COURT
2005 SEP 18 P 3:37
CLERK OF COURT
DISTRICT OF UTAH

Name of Defendant: **Ruby Garcia**

Docket Number: **2:05-CR-00827-001-PGC**

Name of Judicial Officer: **David O. Nuffer, United States Magistrate Judge**

Date of Release: **November 21, 2005**

PETITIONING THE COURT

☒ To amend the petition signed on as follows:

CAUSE

The Pretrial Services officer believes that the defendant has violated the conditions of supervision as follows:

Original Allegations:

Allegation No. 1: The defendant failed to submit for a drug test on July 18, 2006

Allegation No. 2: The defendant submitted to a drug test on August 3, 2006, testing positive for methamphetamine

Allegation No. 3: The defendant failed to submit for a drug test on August 15, 2006

Additional Allegations:


Allegation No. 4: The defendant failed to submit for a drug test on August 28, 2006

Allegation No. 5: The defendant failed to submit for a drug test on September 7, 2006

Allegation No. 6: The defendant failed to submit for a drug test on September 11, 2006

Allegation No. 7: The defendant failed to submit for a drug test on September 15, 2006

I declare under penalty of perjury that the foregoing is true and correct



Amie Williamson, United States Pretrial Services Officer

Date: September 18, 2006

THE COURT ORDERS:

- [☒] That the original petition be amended to
include all allegations outlined.
- [☐] No action
- [☐] Other



Honorable David O. Nuffer
United States Magistrate Judge

Date: _____

9/18/06

Judson T. Pitts (9946)
Attorney for Plaintiff
3760 Highland Drive Suite 429
Salt Lake City, Utah 84106
Email: judsonpitts@hotmail.com
Telephone: (801) 273-3955
Fax: (801) 273-3352

FILED
U.S. DISTRICT COURT

2006 SEP 18 A 10:50

CLERK OF COURT

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MARK NUTTALL,

Plaintiff,

v.

THE FIRST NATIONAL BANK OF
OMAHA, aka FIRST BANKCARD
CENTER,

Defendant.

**Order of Dismissal
With Prejudice**

Jury Demanded

Civil No. 2:05cv00097 DB

Judge: Dee Benson

Upon motion of the parties and good cause appearing therefor, the parties to this action having entered into a settlement agreement resolving their disputes, the Court hereby:

ORDERS, ADJUDGES, AND DECREES that the Complaint filed by the plaintiff is hereby dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

Dated this 15 day of September, 2006:

BY THE COURT:



Judge Dee Benson
United States District Court

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EDWARD MURRELL, an individual,
Plaintiff,

vs.

COOPER TIRE & RUBBER CORP., a
Delaware corp.,
Defendant.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
MOTION TO HOLD LISA
PASBJERG IN CONTEMPT AND
FINDING PASBJERG IN
CONTEMPT

Case No. 2:05-CV-252 TS

Plaintiff moved for an order holding Lisa Pasbjerg in Contempt for the failure to comply with the Court's August 3, 2006 Order Granting Motion to Compel Return of Confidential Documents (Order Compelling Return).¹ The Motion to Compel ordered Pasbjerg to comply with an earlier Protective Order of Confidentiality² by returning to Plaintiff's counsel all confidential materials and signing and returning a certification that she had so complied. Defendant filed a notice that it had no objection.

¹Docket No. 52.

²Docket No. 18.

On September 8, 2006, the Court issued an Order to Show Cause directing Pasbjerg to file a response by September 18, 2006 and show cause as to why she should not be held in contempt for failure to comply with the Court's Order Compelling Return. Pasbjerg has not responded.

In a civil contempt context, a plaintiff must prove liability by clear and convincing evidence. This means the [plaintiff] "has the burden of proving, by clear and convincing evidence, (1) that a valid court order existed, (2) that the defendant[s] had knowledge of the order, and (3) that the defendant[s] disobeyed the order."³

"The contemnor's disobedience need not be 'willful' to constitute civil contempt. Indeed, a district court is justified in adjudging a person to be in civil contempt for failure to be reasonably diligent and energetic in attempting to accomplish what was ordered."⁴

The Court makes the following findings by clear and convincing evidence. The Court's Order Compelling Return is a valid court order. Pasbjerg was personally served with a copy of the Order Compelling Return.⁵ The Order Compelling Return warned Pasbjerg that the failure to comply may subject her to being held in contempt. Pasbjerg had knowledge of the Order Compelling Return as a result of the personal service. Pasbjerg has not returned any of the required documents as required by the Order Compelling Return.⁶ Pasbjerg's failure to return the documents is a failure to comply with

³*F.T.C. v. Kuykendall*, 371 F.3d 745, 756-57 (10th Cir. 2004) (quoting *Reliance Ins. Co. v. Mast Constr. Co.*, 159 F.3d 1311, 1315 (10th Cir. 1998)).

⁴*Bad Ass Coffee Co. of Hawaii, Inc. v. Bad Ass Coffee Ltd. P'ship.*, 95 F.Supp.2d 1252, 1256 (D. Utah 2000) (citation and footnote omitted).

⁵Docket No. 52, Ex. D (Davis Aff. Re: personal service on Pasbjerg); *see also* Docket No. 50 (certificate of service of Order Compelling Return on Pasbjerg).

⁶Docket No. 51, ¶ 8.

the Order Compelling Return. Pasbjerg is in contempt for the willful failure to return the documents as required by the Order.

Based upon the foregoing, it is therefore

ORDERED that Plaintiff's Motion to Hold Lisa Pasbjerg in Contempt (Docket No. 52) is GRANTED. It is further

ORDERED, ADJUDGED, AND DECREED that Lisa Pasbjerg is in contempt for the failure to comply with the Court's August 3, 2006 Order Granting Motion to Compel Return of Confidential Documents. It is further

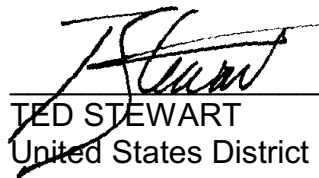
ORDERED that

- A. Ms. Pasbjerg shall appear for deposition by counsel for Cooper Tire & Rubber Company ("Cooper") within 30 days of the entry of this Order to answer questions regarding any and all Cooper confidential material she obtained in this lawsuit;
- B. At or before her deposition, Ms. Pasbjerg shall provide to Cooper's counsel an accounting of all Cooper confidential material that she received in this lawsuit, including the current location of such documents and any persons with whom she has disseminated such documents;
- C. At or before her deposition, Ms. Pasbjerg shall return to Cooper all of Cooper's confidential material obtained in this lawsuit, including all hard copies, compact discs, and any summary or portion thereof; and

D. At or before her deposition, Ms. Pasbjerg shall produce to Cooper's counsel any and all written records, documents, and computer records regarding any portions of Cooper's confidential material for the purposes of determining the current location, possession and status of such confidential material and to determine whether or not the material has been disseminated in further violation of the terms of this Court's Protective Order of Confidentiality.

DATED September 19, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line. The signature is stylized with a large initial "T" and a cursive "S".

TED STEWART
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 18 P 2:12

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

BRETT L. TOLMAN, United States Attorney (# 8821)
JOHN K. MANGUM, Assistant United States Attorney (# 2072)
185 South State Street, #400
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Facsimile: (801) 524-6926
Attorneys for Plaintiff, United States of America

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff, and
UTAH DAIRYMEN'S ASSOCIATION,
GIBBONS BROTHERS DAIRY
LIMITED AND B-BAR DAIRY LLC,
Intervenor-Plaintiffs,

v.

COUNTRY CLASSIC DAIRIES, INC.,
doing business as Darigold Farms of
Montana, a Montana Corporation,
Defendant.

Civil No. 2:05CV00499 DS

**Order Granting Stipulated Motion for
Extension of Time for Plaintiffs to
Respond to 1) Defendant's Motion for
Summary Judgment and 2) Defendant's
Responses to Plaintiffs' Summary
Judgment Motions**

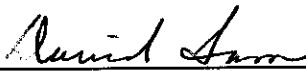
Judge David Sam

COUNTRY CLASSIC DAIRIES, INC.,
Third-Party Plaintiff,
v.
MONTANA DEPARTMENT OF
LIVESTOCK, MONTANA BOARD OF
MILK CONTROL, MONTANA MILK
CONTROL BUREAU, MONTE NICK, in
his official capacity as Bureau Chief of the
Montana Milk Control Bureau, GARY
PARKER, in his official capacity as
Chairperson of the Montana Board of
Milk Control, and ROBERT (CLYDE)
GREER, MICHAEL KLEESE, JIM
PRINKKI, and LARRY VAN DYKE,
each in their official capacity as members
of the Montana Board of Milk Control,
Third-Party Defendants.

The Court, finding adequate cause for the same, hereby grants the stipulated motion of Plaintiffs for an extension of time through and including Friday, October 20, 2006, in which Plaintiffs may file and serve their responses to Defendant's Motion for Summary Judgment, and their replies in support of their own separate motions for summary judgment.

Dated this 18th day of September, 2006.

By the Court:



Honorable David Sam, District Court Judge

Approved:

/s/ R. Christopher Preston (signed by filing Atty per e-mail approval to JKM 9-15-06)
J. Craig Smith
R. Christopher Preston
SMITH HARTVIGSEN, PLLC
Counsel for Defendant Country Classic Dairies, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a true copy of the foregoing [proposed] Order Granting Stipulated Motion for Extension of Time for Plaintiffs to Respond to 1) Defendant's Cross-Motion for Summary Judgment, and 2) Defendant's Responses to Plaintiffs' Summary Judgment Motions, was filed electronically via the Court's CM/ECF electronic filing system, on this 15th day of September, 2006, which is relied upon hereby to then electronically serve the same on participating counsel noted below:

J. Craig Smith jcsmith@smithlawonline.com
R. Christopher Preston chris@smithlawonline.com
SMITH HARTVIGSEN, PLLC
215 So. State St., Ste. #650
Salt Lake City, UT 84111

John H. Vetne john.vetne@verizon.net
103 State St. #6
Newburyport, MA 01950

Charles M. English, Jr. cenglish@thelenreid.com
Wendy M. Yoviene wyoviene@thelenreid.com
Thelen Reid & Priest LLP
701 8th Street, N.W., Suite 800
Washington, D.C. 20001

Brent O. Hatch bhatch@hjdllaw.com
Hatch James & Dodge, P.C.
10 W. Broadway, Suite 400
Salt Lake City, UT 84101

Joni J. Jones, Assistant Attorney General jonijones@utah.gov
Office of the Utah Attorney General, Litigation Division
P.O. Box 140856
Salt Lake City, UT 84114-0856

and I hereby certify that this same date I have mailed by United States Postal Service and e-mailed said filings to the following non-CM/ECF participant:

Norman C. Peterson nopeterson@mt.gov
Montana Department of Justice, Agency Legal Services Bureau
1712 Ninth Ave. P.O. Box 201440
Helena, MT 59620-1440

/s/ John K. Mangum

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DAVID K. BROADBENT, as Receiver, for
MERRILL SCOTT & ASSOCIATES, LTD.,
et. al.,

Plaintiff,

vs.

THOMAS SHELTON POWERS, M.D., an
individual, and MICHELLE POWERS, and
individual,

Defendants.

ORDER RE: RENT MONEY

Civil No. 2:05 CV 539

On May 19, 2006, the court denied Receiver David K. Broadbent's motion for an order requiring Thomas Shelton Powers, M.D., to pay rent money to the receivership estate. That denial was based on the parties' stipulation that Dr. Powers would place rent money in an account with the court. The court now orders that the Clerk of the Court invest any money submitted by Dr. Powers in compliance with the May 19, 2006 order in three-month Treasury Bills, pending the resolution of the parties' current dispute.

SO ORDERED this 19th day of September, 2006.

BY THE COURT:



TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP 18 A 10:50

CHRISTOPHER HARRIS,

Plaintiff,

vs.

COPPER HILLS YOUTH CENTER & KIDS
BEHAVIORAL HEALTH OF UTAH,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER
MAGISTRATE'S DISCOVERY
ORDER**

Case No. 2:05-CV-672

Judge Dee Benson


Before the Court is Plaintiff Christopher Harris's Motion to reconsider part of the Magistrate Judge's decision denying his motion to compel the contact information, including residential addresses, of current and prior employees of Defendant.

Pursuant to rule 72 of the Federal Rules of Civil Procedure, a district court judge shall consider objections to a magistrate judge's pretrial order. The district judge shall modify or set aside any portion of the magistrate judge's order he finds to be clearly erroneous or contrary to law. See also FED. R. CIV. P. 72(a). Plaintiff filed a timely motion to reconsider Magistrate Judge Warner's August 22, 2006 pretrial Order.

Having reviewed all relevant materials, including the reasoning set forth in the magistrate judge's Order, the Court concludes that Magistrate Judge Warner's order is not clearly erroneous or contrary to law. Accordingly, the Court DENIES Plaintiff's motion for reconsideration.

IT IS SO ORDERED.

DATED this 15th day of Sept. ~~August~~, 2006.


Dee Benson
United States District Judge

United States District Court
for the
District of Utah

Request and Order to Amend Previous Petition on Conditions of Pretrial Release

Name of Defendant: **David Clark**

Docket Number: **2006 CR-00034-001-DS**

Name of Judicial Officer: **David O. Nuffer, United States Magistrate Judge**

Date of Release: **February 22, 2006**

PETITIONING THE COURT

☒ To amend the petition signed on August 25, 2006 as follows:

CAUSE

The pretrial services officer believes that the defendant has violated the conditions of supervision as follows:

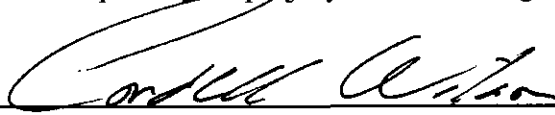
Original Allegations:

Allegation No. 1: On July 5, 2006 and July 27, 2006, the defendant submitted urine samples which tested positive for the presence of methamphetamine.

Additional Allegations:

Allegation No. 2: On August 7, 9, and 25, 2006, the defendant submitted urine samples which tested positive for the presence of methamphetamine.

I declare under penalty of perjury that the foregoing is true and correct



Cordell Wilson, U.S. Pretrial Services Officer
Date: September 18, 2006

THE COURT ORDERS:

- ☒ That the original petition be amended to include all allegations outlined.
☐ No action
☐ Other



Honorable David O. Nuffer
United States Magistrate Judge

Date: **9/18/06**

Joshua M. Bowland (10075)
8 East Broadway, Suite 500
Salt Lake City, Utah 84111
Tel. 801.746.4044
Fax. 801.746.5613
joshbowland@aol.com

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 3:17

DISTRICT OF UTAH

RECEIVED

SEP 18 2006

OFFICE OF
JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARTURO LOYA-CASTILLO,

Defendant.

**ORDER FOR APPOINTMENT
OF INTERPRETER**

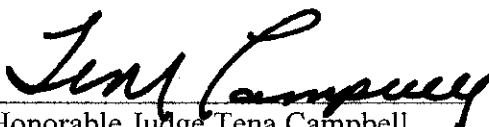
Case No. 2:06CR00061

Judge Tena Campbell

THIS MATTER having come before the Court on the Defendant's Motion for Appointment of Interpreter, seeking the appointment of Alex Laguna, Spanish Translator, in the above-matter, the Court having reviewed the pleadings and being thus informed; now therefore:

IT IS ORDERED that the Court appoints Alex Laguna, Spanish Translator, ~~up to the amount~~ ^{not to} ~~of \$1,600.00~~ ^{exceed \$750 TC} to provide interpreter services in the above-entitled matter, pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A(e)(3).

DATED this 20 day of September, 2006.


Honorable Judge Tena Campbell
District Judge, District of Utah

FILED
U.S. DISTRICT COURT

2006 SEP 19 A 9:55

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ANTHONY GINES,

Defendant.

TRIAL ORDER

Civil No. 2:06-CR-000167

The final pretrial conference in this matter is scheduled for Monday, September 25, 2006, at 11:00 a.m.

This case is set for a 2-day trial to begin on Monday, October 2, 2006, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Pretrial Order.

At the pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1 and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

In addition to the provisions in the final pretrial order thus called for, the following special provisions will apply:

(a) The statement of uncontroverted facts called for in Section 3 of the General Form of the Pretrial Order shall be in narrative form. Such facts shall be considered substantive evidence in the case and shall be marked as Exhibit 1. Upon commencement of the trial, Exhibit 1 shall be read into evidence. Except as set forth in Exhibit 1, no further evidence as to the agreed facts may be entered into the record at trial.

(b) In reference to Section 7 of the General Form of the Pretrial Order, regarding all witnesses that propose to be expert witnesses, the parties are directed to append to Exhibit 1 copies of the curriculum vitae of each such expert. Absent specific leave of Court, the expert may not present more than five (5) minutes of professional qualification. It is anticipated that in most cases, the parties will stipulate to expertise, although in appropriate cases, voir dire or cross-examination of an expert's qualification may be permitted; said examination may go beyond the direct oral testimony as to qualification.

3. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the

instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions (and any proposed special verdict form), without citation to authority, formatted for Wordperfect 6.1 through 8.0. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 3(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

4. Special Verdict Form

The procedure outlined for proposed jury instructions will also apply to special verdict forms.

5. Requests for Voir Dire Examination of the Venire.

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least ten business days before trial**.

6. Findings of Fact and Conclusions of Law

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Ms. Patti Walker, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

As with proposed jury instructions and special verdict forms, the proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and on a 3.5" high density computer diskette formatted for WordPerfect 6.1 through 8.0.

7. Trial Briefs

Each party should file a Trial Brief no later than five business days before trial. Such brief shall include a list of all witnesses to be called and a short statement as to the substance of that witness' testimony.

8. Motions in Limine

All motions in limine are to be filed with the court at **least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

9. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

10. In Case of Settlement

Pursuant to DUCivR 41-1, the court will tax all jury costs incurred as a result of the parties' failure to give the court adequate notice of settlement. Leaving a message on an

answering machine or sending a notice by fax is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator or a member of the court's staff by means of a personal visit or by person-to-person telephonic communication.

11. Courtroom Conduct

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(f) Sidebar conferences are discouraged. Most matters requiring argument should be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

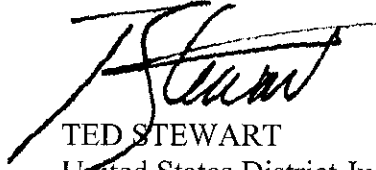
(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 18th day of September, 2006.

BY THE COURT:


TED STEWART
United States District Judge

James A. Valdez (#3308)
466 South 400 East, Suite 102
Salt Lake City, Utah 84111-3301
Telephone: (801) 328-3999
Facsimile: (801) 328-3998
E-mail: AbogadosincJV@netscape.net
Lawyer for Ms. Huyhn

FILED
U.S. DISTRICT COURT

2006 SEP 19 A 9:12

DISTRICT OF UTAH

DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

-vs-

NGOC HOA HUYNH,

Defendant.

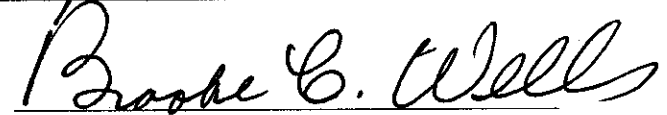
**ORDER TO MODIFY
PRETRIAL RELEASE
CONDITIONS TO ALLOW
LIMITED TRAVEL**

**Case No. 2:06 CR 550 PGC
Magistrate Judge Samuel Alba**

Counsel for NGOC HOA HUYNH filed a motion to modify conditions of Pretrial Release. The court having received and reviewed the motion issues the following order:

Defendant's release conditions are modified to include all previous conditions, imposed by the court and to allow limited travel, with any additional conditions as directed and in the discretion of the Utah Office of Federal Pretrial Services. The defendant is also required to comply with any additional conditions Federal Pretrial Services may impose for Ms. Huynh's travel outside the State of Utah to Houston Texas beginning on the 25th day of September, 2006 and to return on the 2nd day of October, 2006.

So Ordered this 15 day of Sept. 2006.


Magistrate Judge ~~Samuel Alba~~
Brooke C. Wells

United States District Court

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SEP 18 2006

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 4:32

IN THE UNITED STATES DISTRICT COURT

OFFICE OF
JUDGE TENA CAMPBELL

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

BY: UNITED STATES OF AMERICA, : 2:06-CR-615 TC
Plaintiff, :
vs. : ORDER CORRECTING INDICTMENT
JUAN CARLOS HERNANDEZ-GARCIA, :
and AGUSTIN SAUCEDO-MURILLO, :
AKA Augustine Murillo-Saucedo, :
AKA Augustine Mateas-Tesco, :
AKA Agustin Matias-Terco, :
Defendants.

Based upon the representations made by the United States in its submitted Motion to Correct the Indictment and incorporated memorandum of points and authorities;

And because the correction to be made does not affect an essential element of the charge in Count II of the Indictment;

THEREFORE Count II of the Indictment in the above-captioned case is hereby corrected to read "... and punishable pursuant to 21 U.S.C. § 841(b)(1)(A) and ..."

DATED this 19 day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MIGUEL DAVID GEDO,
Plaintiff,

vs.

JAMES R. TAYLOR; JOHN C.
BACKLUND; ROBERT J. CHURCH;
CHRISTY GEE; BECKY DOWNEY;
OREM CITY POLICE OFFICER #356;
JOHN DOES #1 - #10,
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING MOTION TO
DISMISS OREM DEFENDANTS;
GRANTING STATE
DEFENDANTS' MOTION TO
DISMISS AND DENYING
PLAINTIFF'S REQUEST FOR
DEFAULT JUDGMENT

Case No. 2:06-CV-116 TS

This matter is before the Court on Motions to Dismiss filed by the Defendants and a Request for Entry of a Default Judgment by Plaintiff. Plaintiff brings claims under 42 U.S.C. §1983 for violations of his due process rights, and for civil conspiracy, mail fraud, and computer crimes. His allegations arise from a traffic court case and generally allege wrongdoing in connection with alleged discrepancies of dates of postmarks, orders and

certificates of mailing, or alleged alterations to docket entry dates. The relief he seeks in his Complaint is to have Defendants removed or suspended from employment, referral for criminal prosecution, institution of impeachment proceedings for defendants who are judges, or other judicial proceedings to remove the non-judicial defendants, and money damages. Robert J. Church and Orem City Police Officer #356 will be referred to as the Orem Defendants. The remaining defendants will be referred to as the State Defendants.

A. STANDARDS OF REVIEW

An absolute immunity defense may be asserted in a Rule 12(b)(6) motion, in which the Court asks “if the allegations of the complaint disclose activities protected by absolute immunity.”¹ In considering a Rule 12(b)(6) Motion, the court “presumes all of plaintiff’s factual allegations are true and construes them in the light most favorable to the plaintiff”² and will not dismiss a Complaint for failure to state a claim “unless it appears beyond doubt the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”³ But “conclusory allegations without supporting factual averments are” not sufficient.⁴

Because Ballenger proceeds pro se, the Court must construe his pleadings liberally and hold his submissions to a less stringent standard than formal pleadings drafted by

¹*Long v. Satz*, 181 F.3d 1275, 1279 (11th Cir. 1999) (prosecutorial immunity).

²*Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

³*Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

⁴*Hall*, 935 F.2d at 1110.

lawyers.⁵ This means that “if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements.”⁶ No special legal training is required to recount facts surrounding an alleged injury, and pro se litigants must allege sufficient facts, on which a recognized legal claim could be based.⁷ The Court should dismiss the claim “only where it is obvious that he cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.”⁸ “Dismissal with prejudice is appropriate where a complaint fails to state a claim under Rule 12(b)(6) and granting leave to amend would be futile.”⁹

B. OREM DEFENDANTS’ MOTION TO DISMISS

The Orem Defendants move to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that Plaintiff fails to allege a constitutional violation and that they have immunity from suit for the actions alleged. Plaintiff has not filed a response to the Orem Defendant’s Motion to Dismiss.

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Perkins v. Kan. Dept. of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999).

⁹*Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006) (citing *Grossman v. Novell, Inc.*, 120 F.3d 1112, 1126 (10th Cir. 1997)).

Plaintiff's allegations against defendant Church are that in his role as Orem City prosecutor he filed a motion and memorandum in opposition to Plaintiff's motion and conspired with another defendant, a judge, to change the date of some file stamped documents in the traffic case.

Prosecutors enjoy absolute immunity to liability under § 1983 for actions "within the scope of their prosecutorial duties."¹⁰ The filing of documents in opposition to motions and communications with a judge regarding a pending case are within the scope of prosecutorial duties because they are intimately associated with the judicial phase of the criminal process.¹¹ Thus, Defendant Church is absolutely immune from suit arising from actions and omissions relating to such prosecutorial duties.

Plaintiff's allegations against Defendant Officer #356 (Michael Dutson) are that he committed perjury by giving false and inconsistent material statements at the state court trial. The law is clear that witnesses are absolutely immune from damages liability based on their testimony."¹²

Accordingly, the Orem Defendants having shown that they are entitled to absolute immunity from suit, the Court will grant the Orem Defendants' Motion to Dismiss.

C. PLAINTIFF'S OBJECTION TO APPEARANCE OF UTAH ATTORNEY GENERAL
AND REQUEST FOR COURT TO ISSUE DEFAULT JUDGMENT

¹⁰*Arnold v. McClain*, 926 F.2d 963, 966 (10th Cir. 1991).

¹¹*Imbler v. Pachman*, 424 U.S. 409, 430 (1976).

¹²*Briscoe v. LaHue*, 460 U.S. 325, 326 (1983).

Plaintiff filed his Request for Default Judgment and Objection to the Appearance of the Utah Attorney General as part of his Objection to the State Defendants' Motion for an Enlargement of Time to file an answer or to otherwise respond to the Complaint.¹³ He contends that because their Motion for an Enlargement of Time was not timely, any response is not timely and they are in default.

The Court finds that the Motion for Extension of Time was filed timely because it was filed on the date the response was due and therefore was filed before the expiration of the time period to respond.¹⁴ The Court granted the Motion and entered an Order¹⁵ allowing the State Defendants up through March 20, 2006, to file an answer or otherwise respond. The State Defendants filed their Motion to Dismiss on March 15, 2006,¹⁶ therefore there is no failure to respond. Accordingly, there being no default, the Motion for Default Judgment must be denied.

The Court construes Plaintiff's Objection to the Appearance of the Utah Attorney General and any member of his staff as a motion to disqualify them. He has not stated grounds for their disqualification and the Motion will be denied.

D. STATE DEFENDANTS' MOTION TO DISMISS

The State Defendants are James R. Taylor and John C. Backlund, state court judges (Judicial Defendants), and Becky Downey and Christy Gee, employed as a court

¹³Docket No. 16.

¹⁴Fed.R.Civ.P. 6(b).

¹⁵Docket No. 17.

¹⁶Docket No. 19.

clerks (the Clerk Defendants). Plaintiff alleges that the Judicial Defendants acted improperly regarding dating or mailing, and failed to rule on motions or requests in an attempt to avoid recusal. He alleges that the Clerk Defendants assisted with these actions or assisted with the prosecutor's actions. He also alleges the Clerk Defendants deposed false affidavits, but does not allege the reason or circumstances of such affidavits. The State Defendants seek dismissal on the following grounds: (1) the Judge Defendants have absolute judicial immunity from suit; (2) the Clerk Defendants have quasi-judicial immunity; (3) to the extent that any defendant is sued in his or her official capacity, they have Eleventh Amendment immunity from suit; and (4) Plaintiff has failed to allege facts that state a claim for any violation of a constitutional right.

Judges are entitled to absolute judicial immunity for acts taken in a judge's judicial capacity.¹⁷ Considering the allegations of the Complaint, all of the actions alleged by Plaintiff regarding the two Judicial Defendants are acts taken in their judicial capacity and they are therefore entitled to absolute immunity.

There are insufficient facts alleged regarding the Clerk Defendants to determine if they are among those non-judicial officers whose "duties had an integral relationship with the judicial process" and are therefore entitled to qualified immunity.¹⁸ However, having liberally construed the complaint and having presumed that all of Plaintiff's factual allegations are true and construed them in the light most favorable to the Plaintiff, he does

¹⁷*Mireles v. Waco*, 502 U.S. 9, 9 (1991).

¹⁸*Lundahl v. Zimmer*, 296 F.3d 936, 939 (10th Cir. 2002).

not state a claim for any violation of any constitutional right against the Clerk Defendants. Accordingly, the Complaint must be dismissed as to them.

E. PLAINTIFF'S REQUEST FOR DISCOVERY AND REQUEST FOR MANDATORY JOINDER

In Plaintiff's Opposition¹⁹ to the State Defendant's Motion to Dismiss, Plaintiff seeks discovery relating to a criminal action and seeks mandatory joinder of a long list of judges court clerks and the United States of Mexico and its consulate.

The Court finds that it is not an adequate discovery request, because among other reasons, it relates to criminal proceedings and this is a civil case. Further, the request does not state why it is necessary for the resolution of the present motions.

The Court construes the Request for Mandatory "Joinder" as a motion under Fed.R.Civ.P. 19 for joinder of persons needed for just adjudication. The Request fails to state any grounds for mandatory joinder.²⁰ Further the mandatory joinder provisions does not provide a joinder mechanism that can be used by a Plaintiff unless a counterclaim is filed.²¹ Although the Court construes Plaintiff's pleadings liberally, he must still abide by the Rules of Civil Procedure.²² Further, the Court agrees with Defendants that all of the

¹⁹Docket No. 22.

²⁰Fed.R.Civ.P. 19(a).

²¹*Shaw v. AAA Eng'g & Drafting Inc.*, 138 Fed. Appx. 62 (10th Cir. 2005) (citing *Glancy v. Taubman Ctrs., Inc.*, 373 F.3d 656, 669 (6th Cir. 2004) ("Rule 10 is the tool of the defendant, as the plaintiff has the power to choose which partis it wishes to sue and generally has ample freedom to amend . . . to add a party.)").

²²*Ogden v. San Juan County*, 32 F.3d 452 (10th Cir. 1994).

persons sought to be joined appear to be entitled to absolute judicial or sovereign immunity. Therefore, the Court will deny those requests.

Finally, the Court notes that many of the Plaintiff's requests, such as his request that Defendants be subjected to sodium pentathol are frivolous. A claim is frivolous if it "lacks an arguable basis either in law or in fact."²³

F. DEFENDANT'S REQUEST FOR SANCTIONS UNDER 28 U.S.C. § 1927

The State Defendants point out that Plaintiff uses threatening language²⁴ against them and seek an award of attorney fees and expenses²⁵ under 28 U.S.C. § 1927.

Section 1927 provides : "Any attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

"Sanctions under § 1927 are appropriate when an attorney acts recklessly or with indifference to the law. They may also be awarded when an attorney is cavalier or bent on misleading the court; intentionally acts without a plausible basis; [or] when the entire course of the proceedings was unwarranted."²⁶

²³*Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

²⁴Docket No. 22 at 3.

²⁵Docket No. 24 at 3-4.

²⁶*Steinert v. Winn Group, Inc.*, 440 F.3d 1214, 1221 (10th Cir. 2006) (quoting *Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C.*, 430 F.3d 1269, 1278 (10th Cir. 2005)).

There is a split of authority on the issue of whether § 1927 applies to pro se litigants.²⁷ This Court need not resolve the issue because it does not find that the inappropriate threats themselves multiplied these proceedings. The Court does note that other basis of imposing sanctions are available and may be imposed if there is any other such grossly improper conduct.²⁸

G. CONCLUSION AND ORDER

Defendants are entitled to absolute testimonial, judicial, and prosecutorial immunity and, as in the case of the Clerk Defendants, it is apparent that Plaintiff alleges no facts that state any recognizable claim for a violation of constitutional rights. Under these circumstances, it would be futile to allow him to amend the Complaint. It is therefore

ORDERED that the Orem Defendants' Motion to Dismiss (Docket No. 10) is GRANTED and the Complaint is Dismissed with prejudice as to Defendants Robert J. Church and Orem City Police Officer #356 (Michael Dutson) in their individual and official capacities. It is further

ORDERED that Plaintiff's Objection to the appearance of the State of Utah Attorney General Government Defender and Request for Court to Issue Default Judgment on Plaintiff's Behalf (Docket No. 16) are DENIED. It is further

²⁷*Alexander v. U.S.*, 121 F.3d 312 (7th Cir. 1997) (explaining split and declining to take sides).

²⁸*See Clements v. Chapman*, 2006 WL 1739826 (10th Cir. 2006) (affirming trial court's imposition of \$5,000 Rule 11 fine against pro se litigant for filing frivolous amended complaint for purpose of harassing defendant); *Dwire v. Toth*, 64 Fed. Appx. 668 (10th Cir. 2003) (affirming trial court's Rule 11 award of attorney fees and costs against pro se plaintiff for filing repetitive claims).

ORDERED that the State Defendants' Motion to Dismiss (Docket No. 19) is GRANTED and the Complaint is DISMISSED with prejudice as to defendants James R. Taylor, John C. Backlund, Christy Gee, Becky Downey in their individual and official capacities. It is further

ORDERED that the State Defendants' request for sanctions under 28 U.S.C. § 1927 (Docket No. 24) is DENIED. It is further

ORDERED that Plaintiff's Request for Mandatory Joinder and Request for Discovery (Docket No. 22) is DENIED. It is further

ORDERED that the Clerk of Court shall enter a judgment in favor of defendants and against Plaintiff dismissing all of Plaintiff's claims with prejudice.

DATED September 18, 2006.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

**ROBERT BERGMAN, as trustee of
the Utah Pipe Trades Pension Trust
Fund, et al.,**

Plaintiff,

vs.

**COATES CONSTRUCTION &
ENGINEERING, et al.,**

Defendants.

ORDER TO SHOW CAUSE

Case No. 2:06-CV-188 TS

Plaintiffs are hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiffs are directed to respond in writing within ten days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 18th day of September, 2006.

By


United States Judge

FILED
U.S. DISTRICT COURT

2006 SEP 18 P 1:50

CLERK OF COURT

U.S. DISTRICT COURT

Order prepared by:

GARY E. DOCTORMAN (0895)
DAVID R. HALL (9225)
Parsons Behle & Latimer
Attorneys for Chase Bank USA, N.A.
201 South Main Street, Suite 1800
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Email: ecf@parsonsbehle.com
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

STEPHIE M. SILL,

Plaintiff,

vs.

JP MORGAN CHASE BANK, f/k/a BANK
ONE,

Defendant.

Case No. 2:06-CV-00191

**ORDER ON STIPULATED MOTION
FOR EXTENSION OF TIME TO FILE
REPLY MEMORANDUM**

Judge Dee Benson

Defendant and Plaintiff jointly stipulate and move the Court for an order granting Defendant an extension of time to file its reply memorandum to Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel Arbitration.

Based upon the stipulation of the parties, and for good cause shown, the Stipulated Motion is GRANTED. Defendant shall have until September 22, 2006 to file its reply

memorandum to Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel Arbitration.

DATED this 18 day of September, 2006.



DEE BENSON
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND CONTENT:

/s/ Judson T. Pitts

Judson T. Pitts (9946)

Attorney for Stephanie M. Sill

3760 So. Highland Dr., Suite 429

Salt Lake City, UT 84106

Email: judsonpitts@hotmail.com

Telephone: (801) 273-3955

(Signed by filing attorney with permission of
Plaintiff's attorney)

/s/ David R. Hall

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following and that I have mailed by United States Postal Service a true and correct copy of the foregoing to the following non-CM/ECF participants:

Judson T. Pitts (9946)
Attorney for Stephie M. Sill
3760 So. Highland Dr., Suite 429
Salt Lake City, UT 84106

/s/ David R. Hall

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

Southern Utah Wilderness Alliance, et
al,

Plaintiff,

vs.

The United States Department of the
Interior,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06CV342DAK

District Judge Dale A. Kimball

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 10/11/06, at 1:30 p.m. is **VACATED**.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS **DATE**

Nature of claim(s) and any affirmative defenses:

- | | |
|---|------------|
| a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>N/a</u> |

2. DISCOVERY LIMITATIONS **NUMBER**

- | | |
|---|--|
| a. Maximum Number of Depositions by Plaintiff(s) | |
| b. Maximum Number of Depositions by Defendant(s) | |
| c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties) | |
| d. Maximum Interrogatories by any Party to any Party | |

- e. Maximum requests for admissions by any Party to any Party
- f. Maximum requests for production by any Party to any Party

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

- a. Last Day to File Motion to Amend Pleadings 10/5/06
- b. Last Day to File Motion to Add Parties 10/5/06

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

- a. Plaintiff
- b. Defendant
- c. Counter Reports

5. OTHER DEADLINES

- a. Discovery to be completed by:
 - Fact discovery
 - Expert discovery
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions 7/16/07

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- a. Referral to Court-Annexed Mediation N
- b. Referral to Court-Annexed Arbitration N
- c. Evaluate case for Settlement/ADR on
- d. Settlement probability:

7. TRIAL AND PREPARATION FOR TRIAL:

- a. Rule 26(a)(3) Pretrial Disclosures⁴
 - Plaintiffs
 - Defendants

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

DATE

c. Special Attorney Conference⁵ on or before **11/12/07**

d. Settlement Conference⁶ on or before

e. Final Pretrial Conference **8:30 a.m.** **11/26/07**

f. Trial **Length** **Time** **Date**

i. Bench Trial **1** **8:30 a.m.** **12/10/07**

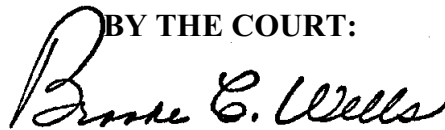
ii. Jury Trial

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 19 day of September, 2006.

BY THE COURT:



Brooke C. Wells
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Southern Utah Wilderness Alliance v US Dept of Interior 2 06 cv 342 DAK alp.wpd

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

KLEIN-BECKER USA, LLC, a Utah
Limited Liability Company, and KLEIN-
BECKER IP HOLDING, LLC, a Nevada
Limite Liability Company,

Plaintiff,

vs.

PATRICK ENGLERT, et al.,
Defendants.


SCHEDULING ORDER

Case No. 2:06-CV-378 TS

Plaintiff having been granted discovery on the issue of personal jurisdiction, it is
ORDERED that Plaintiff may file an option supplemental brief on October 11, 2006,
and Defendants may file an option reply on October 20, 2006.

DATED September 19, 2006.

BY THE COURT:



TED STEWART
United States District Judge

RONALD S. GEORGE, P.A.
P.O. Box 610
Pocatello, ID 83204
(208) 232-2515

Ronald George, Utah Bar No. 7721, attorney for plaintiff

FILED
U.S. DISTRICT COURT

2006 SEP 18 A 10:47

CLERK OF COURT

CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

| | |
|---|---|
| <p>MARK HANSEN,</p> <p>Plaintiff,</p> <p>vs.</p> <p>PHOENIX SYSTEMS & COMPONENTS, INC., JAY WILLIAMSON, PEGGY WILLIAMSON, THOMAS E. WHITMORE and DAVE HENNEY</p> <p>Defendants.</p> | <p>Case No. 2:06CV 00418</p> <p>ORDER TO ENLARGE TIME TO FILE RESPONSE TO MOTION TO DISMISS</p> |
|---|---|

_____Based upon the motion of plaintiff and good cause appearing it is hereby ordered that plaintiff may file his response to all motions to dismiss on or before September 15, 2006.

DATED: September 15th, 2006.



DISTRICT JUDGE

FILED
U.S. DISTRICT COURT

2006 SEP 18 P 1:56

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DIGECOR, INC., a Washington
corporation,

Plaintiff,

v.

E.DIGITAL CORPORATION, a Delaware
corporation; DOES 1 to 20, individuals;

Defendants.

STIPULATED ORDER FOR AN
EXTENSION OF TIME

Civil Case No. 02:06-CV - 00437

Judge Ted Stewart

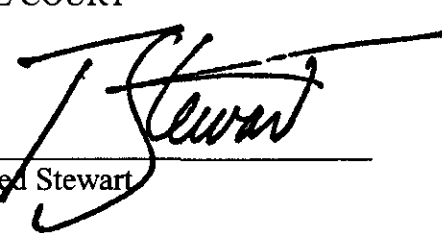
Based on the application of Defendant e.Digital Corporation ("e.Digital") and Plaintiff
digEcor, Inc. ("digEcor"), and good cause appearing therefore,

IT IS HEREBY ORDERED that:

(1) e.Digital shall have until and including Tuesday, September 19, 2006, in which to
file its Memorandum in Opposition to digEcor's Motion for Partial Summary Judgment.

DATED this 18th day of September, 2006.

BY THE COURT



Judge Ted Stewart

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN P. LEARY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER AND NOTICE
UNDER 28 U.S.C. § 2255

Case No. 2:06 CV 663 TC
Criminal Case No. 2:03 CR 458

Federal prisoner and Petitioner John P. Leary has filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The court has reviewed Mr. Leary's motion. By authority of 28 U.S.C. § 2255 and Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, the court hereby orders the United States Attorney to file an answer or other pleading in response to Mr. Leary's motion within forty-five days of the date of this Order.

DATED this 19th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central

District of

UTAH

2006 SEP 19 P 2:26

DISTRICT OF UTAH

Lydia G. Brescia

Plaintiff

V.

Jo Anne Barnhart

Defendant

**ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES**

BY: CLERK

Judge Tena Campbell

DECK TYPE: Civil

DATE STAMP: 09/19/2006 @ 14:28:39

CASE NUMBER: 2:06CV00793 TC

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☐ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this

19th

day of

September

2006

Paul M. Warner
Signature of Judge

Magistrate Judge Paul M. Warner

Name and Title of Judge

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED
U.S. DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

V.

ROBERT GRAY WEEKS

JUDGMENT IN A CRIMINAL CASE

AMENDED

Case Number: DUTX 298CR000278-001

USM Number: 06960-081

James Barber

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 6 of the 2nd Superceding Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|-----------------|--|---------------|-------|
| 18 U.S.C. § 371 | Conspiracy to Commit Securities Fraud & Money Laundering | | 6ss |

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1ss-4ss and 7ss-21ss ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/15/2006

Date of Imposition of Judgment

Signature of Judge

Honorable Ted Stewart

Name of Judge

United States District

Title of Judge

9/19/2006

Date

DEFENDANT: ROBERT GRAY WEEKS
CASE NUMBER: DUTX 298CR000278-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

12 months plus 1 day

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 10/23/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT GRAY WEEKS
CASE NUMBER: DUTX 298CR000278-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ROBERT GRAY WEEKS
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ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.
- 2) The defendant is to inform any employer or prospective employer of his current conviction and supervision status.
- 3) The defendant shall abide by the following occupational restrictions: *The defendant shall not have direct or indirect control over the assets or funds of others. *The defendant shall not be involved in the promotion, sale or solicitation of stocks or investment instruments, and *The defendant shall not be self-employed.
- 4) The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the probation office. 5)The defendant shall provide the probation office access to all requested financial information.

CRIMINAL MONETARY PENALTIES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 50.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Imposed fine is payable at a minimum rate of \$500/month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.